IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 712 of 2006

Chandra Singh Bisht S/o Sri Laxman Singh Bisht
R/o Police Line Road
P.S. Kotwali
Tehsil & District Pithoragarh ... Applicant

Vs

1. State of Uttaranchal
2. Special Judicial Magistrate 1st Class
   Pithoragarh
3. Neeraj Bhatt S/o Sri Nityanand Bhatt
   R/o G.I.C. Road, Pithoragarh
   Tehsil & District Pithoragarh ... Respondents

Sri M.S. Pal, learned Senior Advocate assisted by Sri V.S. Pal, learned counsel for the petitioner
Learned A.G.A. for the State

Hon'ble B.C. Kandpal, J.

This petition under Section 482 Cr.P.C. has been filed by the petitioner – Chandra Singh Bisht who is facing the trial in a Case No. 301 of 2003 (New No. 91 of 2006) Neeraj Bhatt Vs. Chandra Singh Bisht under Section 420 I.P.C. and Section 138 Negotiable Instrument Act pending in the court of Special Judicial Magistrate 1st Class, Pithoragarh.

2. Brief facts of the case are that the complaint was filed by the respondent No. 3 – Neeraj Bhatt against the petitioner for the offence under Section 420 I.P.C. and Section 138 Negotiable Instrument Act. The Complaint was registered as Complaint Case No. 301 of 2003 and after recording the statement under Sections 200 and 202 Cr.P.C. the learned Magistrated took cognizance and issued summoning order against the applicant under Section 420 I.P.C. and Section 138 Negotiable Instrument Act vide order dated 18.06.2004 to face the trial. The petitioner thus challenged the summoning

order as well as prayed for quashing the entire aforesaid criminal proceedings pending against him.

3. Heard Sri M.S. Pal, learned Senior Advocate assisted by Sri V.S. Pal, learned counsel for the petitioner, learned A.G.A. for the State and perused the record.

4. Having considered the arguments advanced by the learned counsel for the parties, I am of the view that there is no abuse of process of the court in this case. The averments made in the petition are the disputed question of fact, which can be assessed and judged by the trial court. I am not supposed to embark upon an enquiry with regard to the credibility of the evidence at this stage. The petitioner has full opportunity to adduce the evidence in his defence. He has to answer the question put to him under Section 313 Cr.P.C. in a positive manner. Whatever, the evidence is to be adduced by the petitioner in his defence, the opportunity will be provided to him in support of his case. The petitioner evidence in his defence is not be discussed and considered by me at the stage of the petition under Section 482 Cr.P.C. Any judgment rendered by me would amount to premature judgment where the evidence is still incomplete and hazy.

5. The petition lacks merit and is liable to be dismissed.

6. Accordingly, the petition under Section 482 Cr.P.C. is dismissed.

(B.C. Kandpal, J.)

30.08.2006
ASWAL